THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 25232 of 2005

Dated: 09-03-2006

Between:

Syed Mohd.Akbar Hussain

..... PETITIONER

AND

The Government of A.P.,

Rep., by its Secretary, Secretariat, Hyderabad

and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25232 OF 2005

ORDER :

The petitioner claims to be one of the joint owners and possessors of land

admeasuring 11,700 sq. yards situated in Sy.Nos.33 and 34 of Meersagar village, Meer Alam Tank, Block No.1, bearing H.No.s.19-4-290, 298, 289, 288, 103 along with structures thereon, which is popularly known as Talab Bagh. It is stated that he is the owner along with his three brothers and cousin and two paternal aunts. It is also claimed that out of the said property, his undivided share is 1018 sq. yards as per the partition decree dated 7-9-1985 in I.A.No.1533 of 1985 in O.S.No.18 of 1962 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad.

In this writ petition, he seeks a declaration that the alleged action of the respondents 2 and 3 in encroaching the land of the petitioner to an extent of about 2,000 sq. yards out of the land described above and structures thereon without following due process of law as arbitrary and illegal.

On behalf of the 2nd respondent, the Chief Executive Officer filed a counter-affidavit in which it is stated that the land in question is a wakf by user. It is also stated that the whole property is wakf property and the same has been under the control of Wakf Board. It is pleaded that the Wakf Board being not a party to O.S.No.18 of 1962, the decree, if any, is not binding on the Wakf Board. The allegation that the Wakf Board has encroached into Sy.Nos.33 and 34 has been denied and the plea of the petitioner that he is the joint owner of the land in question has also been denied and it is stated that the petitioner has never been in possession of 11,700 sq. yards of land at any point of time.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contended that in view of the reports filed by the Commissioner-cum-Receiver in O.S.No.18 of 1962, the Wakf Board cannot claim any right in respect of the land in question and the Idgah property is restricted only to 11,100 sq. yards as ordered in the Gazette Notification dated 9-2-1989.

Having regard to the rival claims made by both the parties and having regard to the nature of controversy involved which requires determination of several disputed questions of fact, as rightly contended by the learned Counsel for the respondents, I am of the opinion that the petitioner ought to have approached the Wakf Tribunal constituted under the Wakf Act, 1995 for redressal of his grievance. However, the learned Counsel for the petitioner contends that the property in question is notified as wakf property under the Wakf Act and therefore the Tribunal has no jurisdiction to entertain the matter. If that be so, the petitioner ought to have availed the common law remedy as available under law, but the matter does not deserve adjudication in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

Accordingly, without expressing any opinion on merits , I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to work out the appropriate remedy as available under law for redressal of his grievance. However, keeping in view the fact that this Court by order dated 2-12-2005 granted status quo during the pendency of this writ petition, which is still in force, it is made clear that the said order of status quo shall be continued for a period of eight weeks from today.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 09–03-2006

Klp/ghn